*THE HONOURABLE SRI JUSTICE P.S.NARAYANA

+W.P. NO.18786 OF 2006

%09.11.2006

# Nellore Nagaraju

..Petitioner

Vs.

$ The State Election Commission, A.P.,
rep by its Secretary, Hyderabad.

And others Respondents.

!Counsel for the Petitioner : Mr.V.Narayana Reddy

^Counsel for the Respondents 1 to 3 : Mr.VV.Prabhakar Rao
Counsel for the Respndent NO.4 : Mr.R.Ramachandra Reddy,
G.P., for Revenue
Mr.K.Upender Reddy.

<Gist :

>Head Note:

?Cases Referred:

**THE HON'BLE SRI JUSTICE P.S.NARAYANA**

**WRIT PETITION NO.18786 OF 2006**

**DATED: 09.11.2006**

**BETWEEN:**

Nellore Nagaraju

… petitioner

And

The State Election Commission, A.P.,
Rep by its Secretary, Hyderabad.

And others

… Respondents.

**THE HON'BLE SRI JUSTICE P.S.NARAYANA**

**WRIT PETITION NO.18786 OF 2006**

**ORDER:**

1. This Court issued rule nisi on 13.9.2006. Heard the counsel on record.

2. The writ petition is filed for a writ of mandamus declaring the action of the 1st respondent issuing proceedings in L.R.No.2044/SEC-B2/2006 dated 28.8.2006 declaring the 4th respondent as Upa-Sarpanch of Eguvamitta Gram Panchayat, Venkatachalam mandal, Nellore district without issuing any notice or conducting enquiry as arbitrary, illegal, unconstitutional, without jurisdiction, violation of principles of natural justice and contrary to the Andhra Pradesh Panchayat Raj ( Conduct of Election of Upa-Sarpanch of Grama Panchayat) Rules 2006 and set aside the same and to pass such other suitable order.

3. The principal contention raised by the learned counsel for the writ petitioner Sri V.Narayana Reddy is that election means a valid election and inasmuch as the first election was made without service of notice, the same cannot be said to be valid election and though the

petitioner is enjoying the majority, the State Election Commission, the first respondent, had totally erred in issuing the impugned proceedings dated 28.8.2006.

4. Per contra, Sri V.V.Prabhakar Rao, the learned counsel representing the respondents 1 to 3 had produced the records before this Court and had explained that these are all factual aspects, which may have to be gone into by the appropriate Election Tribunal and the State Election Commission in the light of Rule 5 in G.O.Rt.No.172 Panchayat Raj and Rural Development Department had only clarified to the effect that the first Upa Sarpanch election in which Sri M.Laxminarayana was elected as Upa Sarpanch is only the valid election. The counsel also would submit that when third respondent has no power or authority to conduct second election, it is but natural that the second election, prima facie to be said to be null and void unless otherwise the said dispute is decided by a competent election tribunal by way of Election Petition.

5. Sri Ram Chandra Reddy, the counsel representing the respondent No.4 also had supported the stand taken by Sri V.V.Prabhakar Rao, referred to supra.

6. It is stated that the writ petition is a resident of Eguvamitta village and the election of Eguvamitta gram panchayat was held on 2.8.2006 and the said village is divided into 8 wards. The petitioner was elected as 4$^{th}$ ward member in the said election. Four ward members, i.e., 1$^{st}$, 2$^{nd}$, 3$^{rd}$ and the petitioner and the Sarpanch had supported the candidature of the petitioner as Upa Sarpanch, whereas the fourth respondent was having support of only four ward members including himself. It is stated that on 17.8.2006, the third respondent called for a meeting for election of Upa Sarpanch post and on that day the meeting was postponed on the ground of lack of quorum. Again on

18.8.2006 the third respondent conducted the election for the office of Upa Sarpanch and the petitioner was declared as Upa Sarpanch of Eguvamitta Gram Panchayat. The third respondent gave declaration on 18.8.2006 to that effect and the name of the petitioner was also entered into minutes book, which became final. It is also stated that the first respondent passed an order on 28.8.2006 in proceedings Lr.No.2044/Sec-B2/06 declaring that the fourth respondent was elected as Upa Sarpanch of Eguvamitta Gram Panchayat and his election is valid and the election of the petitioner is null and void. Certain other factual details also had been narrated and Rule 5 and sub-rule (6) of Rule 5 of the A.P.Panchayat Raj (Conduct of Election of Upa Sarpanch of Grama Panchayat) Rules, 2006 in G.O.Rt.No.172, Panchayat Raj and Rural Development, dated 10.5.2006 (hereinafter referred to as 'the Rules' for the purpose of convenience) also had been referred to.

7. It is no doubt true that the learned counsel representing the writ petitioner had pointed out certain factual aspects, which would go to show that the election in which the fourth respondent was declared elected was not in accordance with the Rules. It may be appropriate to have a look at the impugned order, which reads as hereunder:

" STATE ELECTION COMMISSION
3rd Floor, Buddha Bhavan, M.G.Road, Secunderabad – 500 003.

G.N.Rao, I.A.S., Office:27543124, 27543122
Secretary E-Mail: apsec@ap.gov.in

Website:ww.apsec.gov.in

Lr.2044/SEC-B2/2006

The Collector and District Election Authority,

Nellore.

Sri,

Sub:- 3rd Ordinary elections to gram Panchayat, 2006 – Nellore District – Venkatachalam mandal – conduct of Upa Sarpanch election of Eguvamitta Gram Panchayat twice by the Stage-II Election Officer – clarification – Reg.

Ref:- 1. Lr.Roc.No.2087/2006-A6, dated 23.8.2006 of the District Collector, Nellore.
2. Lr.Rc.No.H1/4584/2006, dated 23.8.2006 of the Collector and District Election Authority, Nellore.

* * *

With reference to your letter cited, it is clarified that, the first Upa Sarpanch election in which Sri Mulkku Laxmi Narayana Rao was elected as Upa Sarpanch is only valid election. The second Upa Sarpanch election is null and void. Sri M.Laxmi Narayana Rao alone may be allowed to function as Upa Sarpanch of Eguvamitta Gram Panchayat of Venkatachalam mandal.

Yours faithfully,
Sd/- G.N.Rao
Secretary

Copy to DPO, Nellore."

8. Strong reliance was placed on Rule 5 dealing with manner of election, which reads as hereunder:

*" **5.Manner of Election:-** (1) Any member may propose only one of the Members for election as Upa Sarpanch duly seconded by another. The names of all the candidates duly proposed and seconded shall be read out by the Presiding Officer of the meeting. The contesting candidates shall be given thirty minutes time for withdrawal.*

*(2) If there is only one validly nominated candidate he shall be declared to have been elected.*

*(3) If there are two or more candidates, an election shall be held by show of hands and votes of the*

*members present at the meeting shall be taken.*

*(4) The Presiding Officer shall, thereafter, record the number of votes polled, for each such candidates ascertained by show of hands. He shall then announce the number of votes secured by each candidate and shall declare the candidate who secured the highest number of votes, as elected.*

*(5) In the event of there being an equality of votes among the candidates, the Presiding Officer shall draw lots in the presence of the members and the candidate whose name is first drawn shall be declared to have been duly elected.*

*(6) The candidate as also the Sarpanch shall also be entitled to vote at the election."*

9. It is pertinent to note that sub-rule (4) of Rule 5 specifies that the Presiding Officer shall, thereafter record the number of votes polled of each candidate ascertained by show of hands, he shall then announce the number of votes secured by each candidate and shall declare the candidate who secured the highest number of votes as elected. It is also true that sub-rule (6) specifies that the candidate as also the Sarpanch shall also be entitled to vote at the election. The proceedings in Roc.No.2087/2006-A6, dated 23.8.2006 of the District Collector, Nellore to the Secretary, State Election Commission also had been placed and certain submissions were made that the first election was conducted by applying some force. Certain other factual controversies also had been pointed out.

10. The validity or invalidity of this election and all these factual controversies may have to be gone into by the appropriate election tribunal and the writ Court at this stage cannot interfere. On facts, it is clear that inasmuch as some clarification was sought for, the first respondent – State Election Commission had clarified that the first election holds good. In the light of Rule 5 of the Rules, inasmuch as

declaration was made, the writ petitioner, if aggrieved of the first election, the remedy available to him is by way of election petition. Hence, this Court is not inclined to express any further opinion about the several of the factual controversies, which had been canvassed before this Court. In view of the same, it is needless to say that the petitioner is at liberty to pursue the other legal remedies available to him.

11. With the above observation, the writ petition is disposed of. No order as to costs.

**09.11.2006.**

**mdaa**